

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEXANDER STROSS

Plaintiff,

vs.

RIVER'S EDGE REALTY, LLC d/b/a
AUSTIN OPTIONS REALTY; DANIEL R.
CASTRO & ALISHA AUSTIN

Defendant

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CIVIL ACTION # 1:17-cv-391-RP

JURY DEMANDED

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANT
ALISHA AUSTIN'S MOTION TO DISMISS

Now comes Plaintiff Alexander Stross, and subject to his pending Motion to Strike Defendant Alisha Austin's Motion to Dismiss under FRCP 12(b)(6) as Untimely (Doc. 51), files this supplemental brief in response.

In her Motion, Austin cites *Stross v. Redfin Corp.*, 204 F.Supp.3d 915 (W.D. Tex. Sept. 2, 2016) for the proposition that Stross lacks standing to sue other realtors for copyright infringement involving photographs that he tendered into the multiple listing service ("MLS") operated by Austin/Central Texas Realty Information Systems ("ACTRIS"). Def.'s Mtn. (Doc 45) at 3-6.

On April 9, 2018, the Fifth Circuit reversed the district court's dismissal of Stross' claims in *Stross v. Redfin*, finding that Stross unequivocally has standing to sue other realtors for copyright infringement involving photographs that he tendered in to the ACTRIS MLS. A copy of the Fifth Circuit's opinion is attached hereto as **Exhibit A**. See Ex. A at 6 (finding that the district court took a "wrong turn" by focusing on contractual standing instead of copyright standing – the same "wrong turn" Austin asks this Court to make now).

In accordance with the foregoing, to the extent the Court considers Austin's standing argument (which would require the Court to go outside the pleadings on a 12(b)(6) motion), it should nevertheless deny the motion because Stross has standing to bring this lawsuit.

Dated this 19th Day of April, 2018

LAW OFFICE OF BUCK MCKINNEY, PC

/s/ R. Buck McKinney

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ATTORNEY FOR PLAINTIFF ALEXANDER STROSS

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties who have appeared in this action.

/s/ R. Buck McKinney